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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Tehama)**

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THE PEOPLE,

Plaintiff and Respondent,

v.

IAN CLAIR MACDOWELL,

Defendant and Appellant.

C086159

(Super. Ct. No. NCR98362)

After defendant Ian Clair MacDowell pleaded guilty to gross vehicular manslaughter while intoxicated (Pen. Code, § 191.5, subd. (a)),<sup>1</sup> the trial court sentenced him to the low term of four years in state prison. On appeal, defendant contends that “denying [him] admittance to the Behavioral Health Court Program, because he lived in a neighboring county, violated his constitutional rights.” He further contends the trial court abused its discretion in denying him probation and sentencing him to state prison.

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

We affirm the judgment of the trial court.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On May 7, 2016, defendant drove his friend D.P. to dinner and then to a casino to gamble. From the casino, defendant drove D.P. to a bar, where they drank until they were asked to leave. Defendant then drove D.P. to another bar, where D.P. got into a fight. Defendant got D.P. out of the bar; driving away, defendant crashed the car. D.P. was injured in the crash and later died from his injuries. A blood sample was collected from defendant at the hospital; his blood-alcohol content was measured at 0.187 percent.

The People charged defendant with gross vehicular manslaughter while intoxicated, driving under the influence causing injury, and driving with a blood-alcohol level of .08 percent or higher, causing injury.

Defendant pleaded guilty to gross vehicular manslaughter as part of an open plea agreement. The parties did not negotiate a sentence and with no guarantee regarding sentencing, defendant was referred to probation “for eligibility and suitability for Behavioral Health Court.”

In March 2017, the “Adult Drug Court Team” from the Tehama County Health Services Agency assessed defendant and determined he was “not a resident of Tehama County and is ineligible for services. Additionally, he is low risk and has no prior record. He is ineligible and unsuitable for AFDC [Adult Felon Drug Court].”

Later in March 2017, the Adult Drug Court Team issued another denial: “Team assessed defendant. Defendant states he does not have a drug problem and doesn’t feel he should be in Drug Court. Defendant lives out of county and states he does not plan to move to Tehama County. Defendant was not found to be high risk nor high need. The Drug Court [T]eam has found the defendant not suitable and not eligible.”

Also in March 2017, the “Behavioral Health Court Team,” from the Tehama County Health Services Agency, determined defendant was ineligible to participate in the Behavioral Health Court Program (BHC program): “Client is not a resident of Tehama County, and if client is a resident of Shasta County, he is not subject to the same terms and conditions and will not be able to fully participate in [the] BHC program. Client reported incongruences in his assessments telling AFDC he is not interested in programs and is not willing to move to Tehama County, however told BHC he is willing to participate and move.”

In its report, the Probation Department (the Department) noted defendant was “deemed ineligible for Behavioral Health Court because he is currently a resident of Shasta County” and “deemed ineligible and unsuitable for Adult Felon Drug Court because he is not a resident of Tehama County and his assessment indicates he has no prior record and is at low risk to reoffend.” The Department described defendant as a veteran of the war in Afghanistan who was injured both physically and mentally during his service. The Department explained that defendant had been diagnosed with posttraumatic stress disorder (PTSD) and was self-medicating by abusing alcohol and marijuana. Defendant, however, stopped using both alcohol and marijuana after D.P.’s death. The Department recommended defendant be granted probation.

In reaching its recommendation, the Department considered defendant’s lack of a criminal record or history of criminal behavior. The Department also considered the fact that defendant was not armed and did not take advantage of a position of trust, the victim was not particularly vulnerable, and the crime did not demonstrate criminal sophistication. Additionally, the Department found that defendant expressed remorse and was likely to comply with the terms of probation.

At a subsequent hearing, the trial court expressed its concerns with defendant’s history of abusing alcohol and marijuana in order to self-medicate. The court also

expressed concern with defendant's initial resistance to address his physical and mental health issues and participate in the programs offered to him. The court summarized its concerns: "I am concerned with your threat to public safety with respect to ongoing PTSD issues, physical issues, self-medication through the use of alcohol and marijuana." Accordingly, the court ordered defendant remanded for a 90-day evaluation pursuant to section 1203.03.

The section 1203.03 evaluation "was prepared with the objective of assessing [defendant's] potential for functioning successfully on probation or under other supervision and the threat to the community should he fail to live up to that potential. The study was not focused on the issue of deterrence to crime or of punishment, as those factors are not responsive to the interview and evaluation format of the [section] 1203.03 process."

As part of that evaluation, S. Muong, Ph.D., a "Doctor of Psychology [and] a member of the DVI/RC Diagnostic Team" assessed defendant and recommended he be granted probation. Dr. Muong found "genuine evidence to suggest that [defendant] has processed his past choices and behaviors and the corresponding consequences. [Defendant] does not have any priors. He will have a stable home to reside in and a solid opportunity for employment. He admitted to self-medicating since his army discharge and would like the opportunity to participate in more treatment. Based on the current psychosocial findings, [defendant] would benefit more from psychotherapy rather than incarceration."

Following the evaluation's conclusion, the Associate Warden of Programs at the Deuel Vocational Institution also recommended defendant be granted probation. A correctional counselor and supervisor concurred in the associate warden's recommendation. In reaching their recommendation, the evaluating body concluded defendant was "a candidate for probation and a low risk to society." They noted that

defendant had no criminal record and he stopped drinking alcohol and smoking marijuana after D.P.'s death. The evaluating body also found it compelling that defendant served in the United States Army, showed great remorse for his crime, and was taking steps "to prevent the same situation from happening again."

At sentencing, the trial court stated that it read and considered defendant's statement in mitigation and numerous other documents, including the diagnostic report and recommendation issued by the assistant warden, the referrals to the AFDC and BHC, the probation report, and statements from the victim's family. The court described defendant's case as "a close call," noting defendant and the victim were childhood friends and defendant was genuinely sorry for killing his friend. But, the court said, the defendant's actions did not only impact defendant and the victim, they impacted the victim's family—his wife and children.

The trial court acknowledged defendant's honorable service in the military, and his efforts to remain clean and sober since D.P.'s death. The court noted, however, that since D.P.'s death, there were things defendant had not done "for example—and I'm not saying that these are dispositive—but I don't have in front of me, for example, proof of attendance at AA meetings and many other things that the defendant could have done." The court also noted defendant appeared to give inconsistent responses to BHC and AFDC, alternately indicating he did not, then did, want to participate in the programs and alternately indicating he would not, then would, move to Tehama County in order to be eligible for the programs.

What was clear to the court was that on the day of D.P.'s death, defendant and D.P. spent the day and evening drinking alcohol and driving from place to place. They drank so much that after crashing the car and going to the hospital, defendant's blood-alcohol level measured at 0.187 percent "well in excess of double the legal limit." Defendant's drinking and driving resulted in D.P.'s death. Thus, while defendant lacked

a criminal record and “served his country honorably, was injured, and as a result of his service has PTSD, . . . the bottom line is you have someone that has died. This is not a DUI with injury where the injury is slight. This is not a fourth DUI where someone under [section] 1170[, subdivision] (h) goes and does local time. Without a doubt, the documentation provided to the Court in the second probation report indicates that [defendant] said that prison, of course, was awful and I totally get that. There’s no doubt about that. But the Court has to look at this from the perspectives of everyone involved—the defendant, his family; the decedent, more importantly, and his family, their wishes. The arguments of counsel. The arguments of [the] People. There is no single determination that is made from just one fact. It’s an ongoing determination and, in this case, has been going on so that the Court had enough information presented to it to make, certainly, an informed decision.

“And what the Court cannot escape is the fact that the general objectives of sentencing relate to the defendant in many different ways. But public safety and deterring others from criminal conduct by demonstrating its consequences are probably the most important here. [Defendant] is someone, again, with no record and has served his country honorably. But, with that said, it simply cannot stand if the defendant is not given a prison sentence in light of the fact that someone has lost their life here because of his actions.”

The court went on to find that defendant was potentially dangerous if not incarcerated. Nevertheless, given his military service, lack of criminal history, obvious remorse, and the reduction in culpability based on his PTSD, the court determined the low term of four years was appropriate. Accordingly, the court sentenced defendant to four years in state prison, awarded him 245 days of custody credit, and ordered him to pay various fines and fees.

## **DISCUSSION**

### **1.0 Defendant's Constitutional Rights Were Not Violated When He Was Found Ineligible for the BHC Program**

Defendant first contends his constitutional rights to travel and equal protection were violated when he was found ineligible to participate in the BHC program because he did not reside in Tehama County. Defendant's contention lacks merit.

First, defendant's argument in support of his contention suggests the trial court found defendant ineligible for the BHC program. The trial court did not make that finding, the BHC team (an arm of the Tehama County Health Services Agency) did.

Second, the BHC team did not, as defendant suggests, find him ineligible to participate in the BHC solely because he did not reside in Tehama County. Indeed, the BHC team noted two facts in support of their finding: (1) defendant did not reside in the county, and (2) defendant was inconsistent about whether he wanted to participate in the alternative sentencing programs. Thus, the record does not support defendant's claim that he was deemed ineligible to participate in the BHC program solely because he was not a resident of Tehama County.

Third, and finally, even if the BHC team had found defendant ineligible to participate in the BHC program solely because he was not a resident of Tehama County, such a decision does not violate any of defendant's constitutional rights. The county has finite resources to allocate to alternative sentencing programs. It is well within its authority to require someone to live within the county to participate in the program. Defendant cites no authority to the contrary.

### **2.0 The Trial Court Did Not Abuse Its Discretion in Denying Probation**

Defendant next contends the trial court abused its discretion in denying his request for probation and sentencing him to prison. We disagree.

The trial court has discretion to make numerous sentencing choices, including whether to grant or deny probation. In making these choices, the trial court need only state its reasons in simple language, identifying the primary factor or factors that support the exercise of discretion. (*People v. Sandoval* (2007) 41 Cal.4th 825, 850-851; Cal. Rules of Court, rule 4.406(a).) When we review a trial court's decision to deny probation, we may not substitute our judgment for that of the trial court. Our function is to determine whether the trial court's order denying probation is arbitrary or capricious or exceeds the bounds of reason considering all the facts and circumstances. (*People v. Weaver* (2007) 149 Cal.App.4th 1301, 1311.) A defendant bears a " 'heavy burden' " when attempting to show an abuse of discretion. (*Ibid.*)

Defendant argues the trial court abused its discretion when it "ignored the recommendations of several correctional and psychological professionals and denied probation because the victim's family was opposed to it." Defendant misconstrues the record.

The record demonstrates the trial court went to great lengths to obtain as much information as possible regarding defendant, his personal and medical history, and his ability to succeed on probation. After defendant was rejected from the BHC program, the court had defendant evaluated under section 1203.03 to determine the likelihood of his success on probation. The court also received a report and recommendation from the probation department. The court considered all of the information contained in those reports and the court noted the recommendations for probation. The court is not, however, bound by those recommendations. (See *People v. Warner* (1978) 20 Cal.3d 678, 683 [trial court is not bound by probation officer's recommendation]; *In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329 [trial court entitled to evaluate weight to be afforded to psychological evaluation].)

The record also demonstrates that the trial court gave serious thought to its sentencing decision. In the court's own estimation, this was not a typical case and whether to grant probation was a "close call." Measured and thoughtful, the court considered factors weighing in favor of probation: the recommendations from the experts, defendant's lack of a criminal record, defendant's remorse, his distinguished military record, his medical records from the Veteran's Administration, and his efforts to remain clean and sober. Against those factors, the court considered factors weighing in support of a prison term: a person died, the impact of that death on the families, the amount of alcohol involved, defendant's blood-alcohol level, his history of drug and alcohol abuse, the ongoing threat to public safety while defendant worked on his sobriety, and the need to deter others from drinking and driving.

Each of the factors considered by the trial court were appropriate, given the general objectives of sentencing and the primary considerations in granting probation: "The Legislature finds and declares that the provision of probation services is an essential element in the administration of criminal justice. The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation. . . ." (§ 1202.7.)

After weighing these factors, the court determined that a prison term was appropriate but only for the low term of four years. Other courts may have reached a different decision but we cannot say the trial court's decision here was "arbitrary, capricious or exceeded the bounds of reason." (*People v. Bradley* (2012) 208 Cal.App.4th 64, 89.) Accordingly, we find no abuse of discretion.

**DISPOSITION**

The judgment is affirmed.

BUTZ, J.

I concur:

MAURO, J.

I concur. There is no indication in the record that defendant's sentence was affected by his disqualification from the Tehama County programs. The trial court never found defendant ineligible for the programs and did not mention his ineligibility in expressing the choice of sentence to be imposed. The "bottom line" expressed by the court was that someone died and public safety and deterring others from criminal conduct were important factors in arriving at a sentence that included prison time. Defendant's right to travel claim is thus divorced from this criminal case and there is no occasion for us to opine on it. His constitutional right, as a nonresident of Tehama County, to participate in a program for Tehama County residents, should properly be pursued in a separate civil proceeding.

RAYE, P. J.